

REMARKS

Reconsideration and allowance of the above identified patent application are hereby requested. Claims 8-18 and 20-25 are now in the application with claims 8, 16, and 25 being independent. It is noted that the application was filed without a claim 19. Claims 1-7 and 26 have been withdrawn in response to the restriction requirement mailed October 9, 2007. Claims 11, 17, 20, and 23-25 have been amended. No new matter has been added.

Rejection Under 35 U.S.C. §103(a)

Claims 8-18 and 20-25 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,006,332 to Rabne et al. in view of U.S. Patent Application Publication No. 2002/0049679 to Russell et al. The Office's rejections are respectfully traversed.

CLAIM 8

Claim 8 recites (emphasis added) "...hosting a web page including a web-based encoder object; receiving information associated with digital content at a client from the client; generating a license key for said digital content; generating a content header for said digital content; transmitting the license key and the content header to the client; and monitoring a web-based encoding and packaging of the digital content at the client by the web-based encoder object from the web-based encoder object."

The Office (Action of February 22, 2008 at page 3) acknowledges that Rabne et al. do not disclose "hosting a web page including a web-based encoder object; monitoring a web-based encoding and packaging of the digital content at the client by the web-based encoder object from the web-based encoder object." However, the Office (*Id.*) asserts that Russell et al. disclose this subject matter at Figs. 1 and 3, and in the Abstract. The Applicant disagrees.

Russell et al. do not disclose encoding and packaging digital content at a client. To the contrary, Russell et al. teach that a client accesses digitally encoded content stored at a server. For example, Russell et al. (para. [0024]) disclose (emphasis added)...

Embodiments of the present invention address needs in the industry as described above by providing a secure digital content licensing system and method, for example enabling online rental, purchase and/or delivery of digitally encoded motion pictures. Systems and processes according to embodiments of the present invention provide a content owner or holder with a mechanism for controlling distribution of content to users by allowing users to access the content through a network.

Further, Russell et al. (para. [0039]) disclose (emphasis added)...

In one embodiment, when the user requests a movie, Web server 104 provides a URL for the location of the movie to UND [user network-enabled device] 102. The URL directs the request to content server 106. Content server memory 108 provides storage for a large volume of digitally encoded movie files. The digitally encoded movie files that reside in content server memory 108 may be encrypted using standard encryption techniques. Content server 106 will deliver the requested movie in an encrypted form to UND 102 if the requested movie resides on content server 106.

Thus, Russell et al. teach that a content owner can control distribution of content to users.

Russell et al. further disclose that digital content can be stored at and distributed from a server in an encoded and/or encrypted form. However, Russell et al. do not disclose that digital content is encoded and packaged at a client. To the contrary, Russell et al. disclose that encoded/encrypted content is distributed to the requesting client.

Further, Russell et al. do not disclose an encoder, much less a web-based encoder object. For example, Russell et al. (Abstract) disclose a system in which a user requests download of selected content and a license from a web site, and the user's network-enabled device ensures that only licensed content is viewed. Russell et al. (para. [0036]) also state that Fig. 1 discloses "an exemplary client-server environment...in which the secure online digital content licensing method and system may be implemented." Further, Russell et al. (para. [0041]) disclose that the web server manages at least the search and download operations for requested content. However, downloading requested content is not equivalent to web-based encoding of content. Thus, Russell et al. do not teach or suggest that the disclosed client-server environment includes a web-based encoder object or monitors web-based encoding.

Additionally, Fig. 3 of Russell et al. (para. [0048]) discloses a process by which a user requests a movie and a license from a server. Russell et al. (para. [0055]) further disclose that a

license generated at a server is transferred to a user network-enabled device. However, Fig. 3 of Russell et al. does not disclose or suggest a web-based encoder object or performing web-based encoding. Accordingly, the proposed combination of Rabne et al. and Russell et al. does not disclose, teach, or suggest monitoring a web-based encoding and packaging of the digital content at the client by the web-based encoder object from the web-based encoder object, as recited in claim 8.

Moreover, the Office (Action of February 22, 2008 at pages 2-3) asserts that Rabne et al. disclose generating a license key and a content header for digital content at a client. Rabne et al. fail to disclose the claimed subject matter. For example, Rabne et al. (Col. 6, lines 53-55) teach that (emphasis added) “The only way to access the many types of information available from the RM server is via an RMc [Rights-Manager compliant] browser application.” Rabne et al. (Col. 8, lines 6-19) also disclose that the RM server evaluates a request to view data and, if the user has permission, the RM server returns the requested holding element data and relevant permissions. Thus, Rabne et al. teach that permissions are established for content at the RM server and that both content and permissions are distributed by the RM server. Rabne et al. do not disclose generating a license key for digital content at a client. Further, Rabne et al. are silent with respect to generating a content header for digital content at a client.

Russell et al. also do not disclose generating a license key and a content header for digital content at a client. Rather, Russell et al. (Abstract) state (emphasis added)...

A user selects content displayed on a main website and requests download of the selected content to the user network-enabled device. To be able to access the content the user must obtain a license. The user's request for a license for specific content comprises information about a desired rental model, an expiration date for the rental model, and information that identifies the user's user network-enabled device, along with other information.

Thus, Russell et al. teach that a user requests both content and a license from a web site. As such, Russell et al. teach generating a license key for digital content at a server, not digital content at a client. Further, Russell et al. are silent with respect to generating a content header for digital content. Accordingly, the proposed combination of Rabne et al. and Russell et al. also fails to disclose or suggest receiving information associated with digital content at a client from

the client, generating a license key for said digital content, and generating a content header for said digital content, as recited in claim 8.

For at least these reasons, claim 8 is patentable over Rabne et al. in view of Russell et al. Claims 9-15 depend from claim 8 and therefore are allowable at least based on claim 8.

Further, claim 16 includes subject matter similar to that of claim 8. For example, claim 16 recites (emphasis added) "...a server to host a web page including a web-based encoder object; and a digital rights management (DRM) engine to, in response to receiving information associated with digital content at the client from the client: generate a license key for said digital content; generate a content header for said digital content; transmit the license key and the content header to the client; and monitor a web-based encoding and packaging of the digital content at the client by the web-based encoder object from the web-based encoder object." Therefore, claim 16 is allowable over the proposed combination of Rabne et al. and Russell et al. for at least the reasons discussed with respect to claim 8. Further, claims 17, 18, and 20-24 depend from claim 16 and therefore are allowable at least based on claim 16.

Additionally, claim 25 includes subject matter similar to that of claim 8. For example, claim 25 recites (emphasis added) "...at a client, store digital content; open a web page that includes a web-based encoder object; transmit information identifying the digital content to a digital rights management server; encode the digital content; receive license information from the digital rights management server; package the encoded digital content and the license information using the web-based encoder object; and host the packaged digital content at a client server." Therefore, claim 25 also is allowable over the proposed combination of Rabne et al. and Russell et al. for at least the reasons discussed with respect to claim 8.

Claim 9

Claim 9 recites (emphasis added) "The method of claim 8, wherein the web-based encoder object comprises an ActiveX object." The Office (Action of February 22, 2008 at page 3) states that Official Notice is taken with respect to the claimed subject matter.

Taking official notice with respect to claim 9 is inappropriate because the subject matter is not capable of instant and unquestionable demonstration as being well-known. MPEP §2144.03 A. states (underlining added for emphasis)...

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

Accordingly, the Office is respectfully requested to either withdraw the rejection for at least this reason or to provide documentary evidence in support of its assertion (emphasis added) "...that 'the web-based encoder object comprises an ActiveX object' is common and well known in prior art in reference to network protocols."

For at least this reason, claim 9 also is allowable over the proposed combination of Rabne et al. and Russell et al. based on its own merits. Claim 17 includes subject matter similar to that of claim 9 and thus also is allowable over the proposed combination of Rabne et al. and Russell et al. based on its own merits for at least the same reason.

Claim 10

Claim 10 recites (emphasis added) "The method of claim 8, wherein said monitoring comprises receiving digital rights management events from the web-based encoder object during said encoding and packaging of the digital content."

The Office (Action of February 22, 2008 at page 4) asserts that Fig. 5 of Rabne et al. discloses the claimed subject matter. The Applicant disagrees. Rabne et al. (Col. 4, lines 40-41) disclose that "Fig. 5 illustrates the RM protocol flow of an RMc browser." Further, Rabne et al. (Col. 13, line 47-Col.) teach that the RM protocol flow is directed to authenticating an RMc browser and controlling usage requests by the RMc browser. Fig. 5 of Rabne et al. does not disclose or suggest the web-based encoder object or the encoding and packaging digital content

recited in claim 10. To the contrary, as discussed above with respect to claim 8, neither Rabne et al. nor Russell et al. disclose the claimed web-based encoder object.

For at least these reasons, claim 10 also is allowable over the proposed combination of Rabne et al. and Russell et al. based on its own merits. Claims 11 and 12 depend from claim 10, and therefore also are allowable based on claim 10. Claim 18 includes subject matter similar to that of claim 10 and thus is allowable over the proposed combination of Rabne et al. and Russell et al. based on its own merits for at least the same reasons.

Claim 11

Claim 11 recites (emphasis added) “The method of claim 10, further comprising receiving said events through a Simple Object Access Protocol (SOAP) interface.” The Office (Action of February 22, 2008 at page 4) states that Official Notice is taken with respect to the claimed subject matter.

Taking official notice with respect to claim 11 is inappropriate because the subject matter is not capable of instant and unquestionable demonstration as being well-known. MPEP §2144.03 A. states (underlining added for emphasis)...

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

Accordingly, the Office is respectfully requested to either withdraw the rejection for at least this reason or to provide documentary evidence in support of its assertion (emphasis added) “...that ‘receiving said events through a SOAP interface’ is common and well known in prior art in reference to network protocols.”

For at least this reason, claim 11 also is allowable over the proposed combination of Rabne et al. and Russell et al. based on its own merits. Claim 20 includes subject matter similar

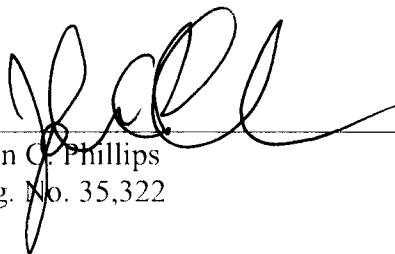
to that of claim 11 and thus also is allowable over the proposed combination of Rabne et al. and Russell et al. based on its own merits for at least the same reason.

Concluding Comments

The foregoing comments made with respect to the positions taken by the Examiner are not to be construed as acquiescence with other positions of the Examiner that have not been explicitly contested. Accordingly, the above arguments for patentability of a claim should not be construed as implying that there are not other valid reasons for patentability of that claim or other claims.

In view of the above remarks, claims 8-18 and 20-25 are in condition for allowance, and a formal notice of allowance is respectfully requested. Please apply a \$60 charge for a one-month Petition for Extension of Time fee and any other charges or credits to deposit account 06-1050.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John C. Phillips', is written over a horizontal line.

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